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 Attorneys for Plaintiff
 Luann Gould

UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

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Luann Gould,	:	
	:	
Plaintiff,	:	05 CV 11118 (PBS)
	:	
– against –	:	
	:	AFFIRMATION OF ROBERT R.
Lucent Technologies, Inc.,	:	THOMAS IN SUPPORT OF
	:	PLAINTIFF’S MOTION IN
	:	OPPOSITION TO SUMMARY
Defendant.	:	JUDGMENT
-----	X	

Robert R. Thomas, an attorney duly licensed to practice law in the Commonwealth of Massachusetts, affirms under penalty of perjury as follows:

1. I am an attorney of Harvey, Kleger & Thomas, counsel to Luann Gould (“Gould”). This affirmation is submitted in support of Gould’s Motion in Opposition to Summary Judgment. All documents attached are true and correct copies of the originals.
2. Pertinent pages from the Deposition Transcript of Luann Gould are annexed here as Exhibit A.
3. Pertinent pages from the Deposition Transcript of Pyong Deletis are annexed here as Exhibit B.

WHEREFORE, I respectfully request that the Court deny Lucent's motion for summary judgment in its entirety.

Dated: September 18, 2006

By: /s/ Robert R. Thomas
Robert R. Thomas

EXHIBIT A

Luann Gould

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1 New Hampshire.

2 Q. Is that near Nashua?

3 A. No.

4 Q. What part of New Hampshire is that?

5 A. Outside Plaistow, Hampstead.

6 Q. Have you taken any educational courses after
7 the eleventh grade?

8 A. I just received my GED, that's all.

9 Q. What is that?

10 A. G E --

11 Q. G-D --

12 A. General education.

13 Q. Diploma?

14 A. It's equal to a diploma, yeah.

15 Q. What did you take, additional courses of
16 some sort after the eleventh grade to complete that?

17 A. At Lucent I just took courses preparing for
18 the GED.

19 Q. Was Lucent the first job you had after the
20 eleventh grade?

21 A. Yeah, basically. I was there since I was
22 19.

23 Q. When did you begin work at Lucent?

24 A. October 16, 1979.

Luann Gould

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1 A. Yes.

2 Q. Where is that?

3 A. 7 Bluebird Lane, Atkinson, New Hampshire.

4 Q. Atkinson?

5 A. Yeah.

6 Q. A-K?

7 A. A-T-K-I-N-S-O-N.

8 Q. Do you have any children?

9 A. Yes.

10 Q. How many?

11 A. Two.

12 Q. Ages, sexes?

13 A. I have a son Edward Desrochers, who is 29
14 years old. And I have a daughter Shelby Gould, who
15 is eight years old.

16 Q. When was Shelby born?

17 A. 19 -- July 22, 1997.

18 Q. Was that before you were divorced?

19 A. After. My divorce started in '96, but it
20 didn't end until '97.

21 Q. Besides Desrochers and Gould, have you been
22 ever known by any other name?

23 A. No.

24 Q. What's your present address?

Luann Gould

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1 employment at Lucent, so that would run it from say
2 about 1996 to 2003, in that approximate time frame,
3 did you have occasion to see any doctors or health
4 care providers for any reason at all?

5 A. Yes.

6 Q. Let's do it chronologically. 1996 did you
7 see any doctor, were you under any doctor's care,
8 receive any doctor's treatment in 1996?

9 A. I don't believe so.

10 Q. 1997?

11 A. Yes.

12 Q. Who did you see?

13 A. For doctors, I was seen by the Women's
14 Health Care. I saw a Dr. Hayman. It was at the
15 Women's Health Care. I saw several doctors there.

16 Q. What did you see them for?

17 A. I was having a high risk pregnancy. I was
18 hospitalized with kidney failure during my
19 pregnancy.

20 Q. And then of course you gave birth?

21 A. Correct.

22 Q. In 1997?

23 A. Correct.

24 Q. Did you give birth at a hospital?

Luann Gould

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1 Q. Shortly after you gave birth?

2 A. Yeah.

3 Q. Within what, months?

4 A. Within a few months. But before that
5 situation, two weeks after I delivered Shelby, I was
6 hospitalized in ICU at the Derry Parker Medical for
7 conjunctive heart failure.

8 Q. Debbie Parker?

9 A. Derry Parker Medical.

10 Q. What town is that in?

11 A. Derry, New Hampshire.

12 Q. This was two weeks?

13 A. Prior to delivery. It was August 6th, my
14 dad's birthday.

15 Q. Two weeks after --

16 A. The delivery of Shelby, yeah.

17 Q. Anything else in 1997?

18 A. I don't believe so.

19 Q. Have you had any further treatment or seen
20 any health care providers after 1997 with respect
21 either to your kidney or your heart problems or your
22 tumor problem?

23 A. Well, other than my kidney problem? well, I
24 had kidney surgery later.

Luann Gould

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1 A. My daughter had allegations of sexual abuse
2 by her father, and I was being treated by doctors as
3 well as my daughter.

4 Q. Both she and you went to what kind of a
5 health care provider?

6 A. She went to her pediatrician, and she went
7 to counseling. And I also was in counseling and
8 under the care of Dr. Cammerilla, too.

9 Q. How long did you continue in counseling or
10 with Dr. Cammerilla or any other health care
11 provider in connection with those allegations?

12 A. It was several months, several months.

13 Q. In 2002?

14 A. 2000 to 2002.

15 Q. Do you know approximately how many times
16 altogether you saw the counselor with respect to
17 this?

18 A. No.

19 Q. Now, you said 2000 or 2000 --

20 A. Is when it started. The allegations were
21 brought to my attention in March of 2000.

22 Q. And it lasted for how long, the treatment?

23 A. Because DSS -- the treatment lasted a couple
24 of years.

Luann Gould

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1 Q. I interrupted. You were about to say D-E?

2 A. DSS was prosecuting. I went through two
3 trials, the Brentwood Family Court.

4 Q. Was that eventually resolved and ended in
5 2002?

6 A. Yes.

7 Q. During that period of time, were you taking
8 any medication or anything, any kind?

9 A. Yes.

10 Q. What?

11 A. I was taking I believe it was Xanax for
12 anxiety, and I was being treated for depression.

13 Q. You were taking Zoloft?

14 A. I'm not sure exactly.

15 Q. Were you taking any other medication for
16 depression?

17 A. No.

18 Q. Leaving aside the situation you've described
19 that began in March 2000 involving the allegations
20 of sexual abuse and through 2002, the family court
21 disposition, during that same period of time, did
22 you have any other medical issues or problems
23 concerning yourself?

24 A. No.

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1 missed from work for any reason?

2 A. I don't recall. I may have.

3 Q. Well, in 1997 you told us that you had
4 certain medical --

5 A. Yes, yes.

6 Q. You had the pregnancy and you had the kidney
7 and you had the heart and you had the tumor?

8 A. Yeah, I was out of work in '97, I know that.

9 Q. Would it surprise you if I were to tell you
10 the records show that in 1997 you had 86 absences
11 from work; in 1998, 134; in 1999, 119; in 2000, 116;
12 in 2001, 95 absences?

13 A. No, it wouldn't surprise me.

14 Q. During that period of time, a number of
15 those absences were covered, weren't they, by Family
16 Medical Leave Act, excused absences?

17 A. Yes, between that and disability.

18 Q. Before 2003, do you recall approximately how
19 many times you requested Family Medical Leave Act
20 absences?

21 A. No, not offhand.

22 Q. Half a dozen?

23 A. From when, 1990 what?

24 Q. 1997, from the time -- the year in which you

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1 Control Plan? I'll call it the ACP.

2 A. Somewhat.

3 Q. Do you recall the fact that under an Absence
4 Control Plan, there are five levels, one, two,
5 three, four, five and degrees of seriousness?

6 A. Yes.

7 Q. What can you tell me about your recollection
8 about the five levels?

9 A. That they exist.

10 Q. What was level one, do you know?

11 A. The first of the levels, first entry of the
12 level system.

13 Q. Under the Absence Control Plan, you were
14 entitled to a certain number of absences per
15 calendar year, not counting excused absences; is
16 that right?

17 A. Correct.

18 Q. Do you remember what the number of absences
19 you were allowed in a year were, the unexcused
20 number you were allowed?

21 A. I believe it was five days.

22 Q. And do you recall what some of the absences
23 were that were not counted against your five days?
24 For example, vacations I imagine were not counted,

Luann Gould

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1 correct?

2 A. Uh-hum.

3 Q. And FMLA leave was not counted, correct?

4 A. Right.

5 Q. And jury duty was not counted, correct?

6 A. Correct.

7 Q. Also not counted against these five days

8 were if you were hospitalized at a hospital,

9 correct?

10 A. Correct.

11 Q. And if you had daycare surgery, whether it
12 was in a hospital or a doctor's office, even though
13 you did not have to stay overnight, correct?

14 A. Correct.

15 Q. Funeral leave, right?

16 A. Uh-hum.

17 Q. And if you were required to appear in court,
18 correct?

19 A. Correct.

20 Q. Those were all not counted against your five
21 days?

22 A. Yes.

23 Q. Now, am I correct that if you had more than
24 five days of absences in a calendar year that were

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1 not exempted under this plan because they didn't
2 fall in the various categories that we just talked
3 about, you went to level one to begin with at the
4 beginning; is that right?

5 A. Correct.

6 Q. And once you went on level one, you got a
7 verbal warning; is that right?

8 A. Yes.

9 Q. And then if you start the year on level one
10 and you go over your five days allowed for that next
11 calendar year, you moved to level two?

12 A. Correct.

13 Q. And at level two, you get a written warning,
14 correct?

15 A. Yeah, yes.

16 Q. Then if you begin the year at level two and
17 you go over the -- at that point was it still five
18 days or was it down to four days? Between level two
19 and three, it was four days, wasn't it?

20 A. I am not sure. I know it dropped as the
21 levels or years went on. I believe it dropped.

22 Q. Whether it was four days or five days, let's
23 say if you exceeded the allowed non-exempt days, you
24 then moved to level three and got some sort of more

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1 formal written warning?

2 A. Yes.

3 Q. Once you were on level three under the
4 Absence Control Plan and you got one more
5 non-exempted absence, you would move to level four?

6 A. Correct.

7 Q. And at level four, you'd be in effect given
8 a final warning and put on a probationary basis; is
9 that right?

10 A. I believe so.

11 Q. And then once you're on level four, if you
12 have one additional non-exempted absence during that
13 same calendar year, that's termination, correct?

14 A. In some cases. Some cases people have been
15 on level five and put on probation.

16 Q. Now, when you began calendar year 2003, you
17 were already on level three, weren't you?

18 A. I believe so.

19 Q. And you were then absent in early January
20 2003 for several days of non-exempted absences.
21 January 6th, 7th and 8th you were out, did not claim
22 Family Medical Leave Act or any other qualifying or
23 exempting reason to be out those days, and those
24 were counted against your allowance; is that

Luann Gould

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1 correct?

2 A. Correct.

3 Q. Then in 2003, you were out again in March,
4 March 3rd through March 28th, approximately three
5 and a half weeks. But that was all a requested and
6 a granted FMLA leave; do you recall that?

7 A. I don't recall being out that many days in
8 March at one time.

9 Q. Do you recall being out in March, though, on
10 an FMLA leave situation?

11 A. March I believe my daughter had bac -- I'm
12 not sure if she had strep throat or bacterial
13 infection. It was one of them. I was out for a few
14 days.

15 Q. Do you remember being out in March and you
16 requested -- March 2003 for at least a few days and
17 you requested FMLA leave, it was granted, you just
18 don't remember the number of days?

19 A. Correct.

20 MR. SPELFOGEL: Just so the record is
21 clear, I've marked the Absence Control Plan as Gould
22 Exhibit Number 4.

23 Q. You were then absent in May 2003 I believe
24 for two days; is that right?

Luann Gould

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1 what it says there? This FMLA is what?

2 A. Is not qualified.

3 Q. All right. Can you tell who signed that?

4 A. Yes, Peggy Blumer.

5 Q. Who is Peggy Blumer?

6 A. She's from New Jersey. She works in the
7 health services department.

8 Q. Employed by Lucent?

9 A. Yes.

10 Q. Now, the second page, who wrote that first
11 line, Greater Hampstead Family?

12 A. I did, Luann.

13 Q. And then you signed immediately after that?

14 A. Correct.

15 Q. And you dated it, May 7, '03?

16 A. Correct.

17 Q. Did you fill out the next few lines, item
18 one and item two?

19 A. Yes, I did.

20 Q. What about item -- the rest of the items?

21 Item three is not filled out. Item four says -- I
22 think it says Luann was absent due to illness of her
23 daughter; is that correct?

24 A. Correct.

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1 had underlined that. Did you underline that?

2 A. No, I didn't.

3 Q. Did somebody at Lucent underline that for
4 you? It wasn't underlined in your presence?

5 A. I don't recall it.

6 Q. Were you out of work for more than three
7 consecutive calendar days because of your daughter's
8 condition in May of 2003?

9 A. In May for the chicken pox?

10 Q. Correct.

11 A. I believe it was two days.

12 Q. Were you out of work for more than three
13 consecutive calendar days in July 2003 because of
14 the conjunctivitis condition of your daughter?

15 A. No.

16 Q. Now, in July when your daughter had
17 conjunctivitis, did you take your daughter to the
18 doctor, also?

19 A. Yes.

20 Q. Was it to Dr. Cammerilla?

21 A. Yes.

22 Q. So that was about a ten-minute drive in each
23 direction; is that right?

24 A. Correct.

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1 Q. Do you recall at any time during July 2003
2 having a conversation with Pyong Deletis about your
3 FMLA situation?

4 A. On July 7th when I called into work and
5 spoke to Pyong, I told her that, you know, the
6 situation my daughter, and she had told me that she
7 had already contacted Peggy Blumer in New Jersey and
8 let her know I was out again. And she said Peggy
9 said you have no days left. And I told her that my
10 daughter was contagious. I had to be home with her,
11 and I would be in the following day, which I did.

12 Q. So Ms. Deletis suggested that you contact
13 Peggy Blumer directly, and you did?

14 A. She didn't suggest I contact Peggy Blumer.
15 She suggested I get the FMLA paperwork filled out
16 from the doctor at that time, the day I spoke to her
17 on 7/7.

18 Q. And did you get it filled out by the doctor?

19 A. Yes, I did, yes.

20 Q. Do you know whether Ms. Deletis herself
21 contacted Ms. Blumer to see if there was anything
22 you could do to help with your qualifying for FMLA
23 leave?

24 A. I don't know if there was any conversation

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1 A. Brian Ahern, Steve Sickel.

2 Q. Was Ms. Deletis there?

3 A. Yes, and Steve Sickel's supervisor, too, I
4 believe the function manager, Mark. The union, Gary
5 Nielson was there. And I believe that would be it.

6 Q. Was there any discussion?

7 A. They handed me this paper and --

8 Q. Who handed it to you?

9 A. I believe it was Steve Sickel.

10 Q. Who said what to whom?

11 A. Said that -- I believe he told me that I was
12 being put on level five, and I was going to be
13 terminated.

14 Q. Did he or anyone else at that meeting go
15 over the information on the level five form?

16 A. Well, they said because of me not qualifying
17 brought me up to level five. And I begged Steve
18 Sickel to not let me lose my job. That I had a half
19 a vacation day left, and I need my job to take care
20 of my child. And there was no hearing of anything
21 from me. He told me that the decision had been
22 made, and I was leaving today. There was no
23 talking.

24 Q. Was there a union representative present

1 A. She had suggested that, you know, to call
2 her. And I had already, you know, given her all the
3 FMLA paperwork and all. I was told by the union
4 that there was no need to contact Peggy Blumer any
5 further.

6 Q. Now, you have an allegation in paragraph 31
7 of your complaint in this matter, which I'm sure
8 your attorney can show you here, in which you allege
9 that Peggy Blumer told your supervisor that she
10 would have denied your previous request for FMLA
11 leave time off in March 2003 that other persons at
12 Lucent had approved. How do you know that?

13 A. It was in the documentation that the union
14 had gotten from e-mails stating that had she been
15 the health care provider on the previous FMLA, that
16 she would also have not qualified those.

17 Q. Do you have a copy or copies of the material
18 you are referring to?

19 A. I believe my lawyer has it.

20 MR. SPELFOGEL: Could we have that
21 produced, please?

22 MR. THOMAS: Yes.

23 MR. SPELFOGEL: We'll reserve Gould
24 Exhibit Number 16.

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1 when I was out is the day that Peggy Blumer denied
2 the May. And then from there on, it went on level
3 five from the 7th and termination.

4 Q. Let me see if I understand you correctly. I
5 believe what you just said was that you believe the
6 company violated the Family Medical Leave Act in
7 connection with your May 2003 absence because it
8 didn't tell you it was denying FMLA leave until
9 after the July 7th absence?

10 A. Yeah, I didn't know if it was approved,
11 denied.

12 Q. Why do you allege that the denial of your
13 July 7th absence as FMLA leave was illegal?

14 A. Because it was a serious illness. Because
15 if it wasn't treated, it could lead to blindness.
16 And they stated it wasn't a serious illness, and it
17 was. And she was on treatment, on medication all
18 that week. They said three days of illness, and it
19 was over three days. If it didn't fall under the
20 Family Medical Leave, it would have fallen under
21 Small Necessity Leave. That was never mentioned to
22 me until after the August 1st termination.

23 Q. Why do you believe it was qualified leave or
24 should have been qualified leave under the Small

1 retaliated against me?

2 Q. No, do you have any evidence of retaliation,
3 except for the fact that you were terminated, you
4 lost your job?

5 A. Well, documentation, holding back paperwork
6 and documentations that I've seen from e-mails back
7 and forth about how she would have denied my
8 previous ones. There's no reason --

9 Q. These are the documents that we've already
10 reserved Exhibit Numbers 16 and 17 for; is that
11 right?

12 MR. THOMAS: Correct.

13 A. Correct.

14 Q. Besides that documentation and the fact that
15 you lost your job, do you have any other evidence
16 that you were retaliated against?

17 A. Well, I don't know -- can I ask my lawyer if
18 I can --

19 Q. Of course.

20 (Attorney/client discussion off the
21 record)

22 A. Well, there was comment from an employee in
23 my department that they had known that I was going
24 to be terminated, that Pyong had told the layout